THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No.24315 of 2007

Between:

N.Rajendran and others.

.. PETITIONERS

and

The Tahsildar.

.. RESPONDENT

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No.24315 of 2007

-

ORDER:

This writ petition has been filed seeking a Writ of Mandamus declaring the action of the respondent in issuing the impugned notice under Section 7(3) of A.P.Land Encroachment Act, 1905, (for short "the Act") as illegal and arbitrary and against the principles of natural justice and consequently direct the respondent not to evict the petitioners from the lands in Sy.No.25/3 situated at Kasavareddypalem Village, Sullurpet Mandal, Nellore District, without following due process of law.

It is the case of the petitioners that each of them has been allotted house sites ranging between Ac.0-01 cents and Ac.0-03 cents in Sy.No.25/3 situated at Kasavareddypalem Village, Sullurpet Mandal, Nellore District. After grant of pattas, they constructed houses and obtained electricity and water connections and living in the said houses. While so, the respondent issued notices under Section 7(3) of the Act stating that the lands held by the petitioners are tank bed and, therefore, the petitioners were called upon to submit explanations as to why they shall not be removed as per the orders of the High Court in W.P.No.2493 of 2006, dated 31-08-2007. It is stated that the petitioners submitted individual explanations for the said notices issued under Section 7(3) of the Act.

I have perused the notices issued under Section 7 (3) of the Act, the explanations submitted by the petitioners, the assignment of the pattas granted in favour of the petitioners as well as the order of this Court in W.P.No.2493 of 2006, dated 31-08-2007, which is taken up writ petition and the same is pending on the file of a Division Bench of this Court.

A perusal of the order in W.P.No.2493 of 2006, dated 31-08-2007, goes to show that this Court directed the District Collector to prepare a comprehensive plan for allotment of alternative sites or pucca houses to the people, who fall in the category of 'Below Poverty Line' and have encroached the tanks and tank beds in the Districts. The action taken reports shall be placed before this Court by 03-11-2007.

It is the case of the petitioners that according to the notices issued by the respondent, the lands in Sy.No.25/2 are only tank bed lands but not Sy.No.25/3. The pattas were granted to the petitioners in Sy.No.25/3. But, insofar as petitioners 23 and 24 are concerned, though their house sites are situated in Sy.No.25/3, erroneously it was mentioned in the patta Certificate as Sy.No.25/2. Further, the house sites allotted in favour of the petitioners are outside the bank bed land, but not in the bank bed.

I am not inclined to express any opinion with regard to the aforesaid contentions. As admittedly, the notices issued are only show cause notices and the petitioners filed their explanations and unless an enquiry is conducted, pursuant to the explanations and final notice has been issued under Section 6 of the Act, giving a reasonable time either for removal of encroachment or for assigning alternative sites or houses as ordered by the Division Bench of this Court in W.P.No.2493 of 2006, the petitioners cannot be removed from the lands in question. Further, I do not see any foundation for the said apprehension that the respondent is going to remove the encroachment, without following due process of law.

Accordingly, the writ petition is disposed of directing the respondent not to remove the encroachment without following due process of law as indicated above. There shall be no order as to costs.

_____

16-11-2007

Prv